

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

10 CIV. 9470

HANS TOUSSAINT

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

Lieutenant christopher PinkerCommissioner Hearing Officer CALERO**COMPLAINT**under the
Civil Rights Act, 42 U.S.C. § 1983
(Prisoner Complaint)Jury Trial: ☒ Yes ☐ No
(check one)

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

I. Parties in this complaint:

- A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff

Name

HANS TOUSSAINT

ID #

08-A-5795

Current Institution

SouthPORT Correctional Facility

Address

P.O. Box 2000Pine city, NY 14871-2000

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name Lieutenant Christopher Pinker Shield # _____
 Where Currently Employed Sing Sing Correctional Facility
 Address 354 Hunter Street
Ossining, New York 10562

Defendant No. 2 Name Commissioner Hearing Officer Calero Shield # _____
 Where Currently Employed Sing Sing Correctional Facility
 Address 354 Hunter Street
Ossining New York 10562

Defendant No. 3 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

Defendant No. 4 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

Defendant No. 5 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

- A. In what institution did the events giving rise to your claim(s) occur? _____
At Sing Sing Correctional Facility
- B. Where in the institution did the events giving rise to your claim(s) occur? _____
Sing Sing Correctional Facility - SHU - Disciplinary Hearing Room
- C. What date and approximate time did the events giving rise to your claim(s) occur? _____
May 17, 2009 I was Taken From General Population To
Special Housing unit approximately 7:00 PM evening Time

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes ☒ No ☐

If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Sing Sing Correctional Facility

B. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes ☒ No ☐ Do Not Know ☐

C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes ☐ No ☐ Do Not Know ☒

If YES, which claim(s)? _____

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes ☐ No ☒

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes ☐ No ☒

E. If you did file a grievance, about the events described in this complaint, where did you file the grievance?

N/A

1. Which claim(s) in this complaint did you grieve? N/A

2. What was the result, if any? N/A

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process.

N/A

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here: N/A

D. Facts:

What happened to you?

See Attached

Who did what?

- ① Confidential Informant who accused Plaintiff of this incident
- ② Lieutenant Christopher Pinner who authored this Tier 3 Misbehavior Report against Plaintiff
- ③ Commissioner Hearing Officer CALERO found Plaintiff guilty of said incident.

Was anyone else involved?

① Inmate Christopher Staley #95-B-0035

② Confidential Informant

Who else saw what happened?

① Correction Officer F. Ortega

② Christopher Staley #95-B-0035

III. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received.

See Attached

IV. Exhaustion of Administrative Remedies:

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Administrative remedies are also known as grievance procedures.

N/A

2. If you did not file a grievance but informed any officials of your claim, state who you informed, when and how, and their response, if any: _____

N/A

- G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies. _____

See Exhibit A

See Exhibit B

Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

V. Relief:

State what you want the Court to do for you (including the amount of monetary compensation, if any, that you are seeking and the basis for such amount). _____

\$ 50.000

FIFTY thousandth

VI. Previous lawsuits:On
these
claims

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes ____ No ☒
- B. If your answer to A is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff

N/A

Defendants

2. Court (if federal court, name the district; if state court, name the county)

3. Docket or Index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending? Yes ____ No ____

If NO, give the approximate date of disposition

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?)

On
other
claims

- C. Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment?
Yes ____ No ☒

- D. If your answer to C is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff

N/A

Defendants

2. Court (if federal court, name the district; if state court, name the county)

3. Docket or Index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending? Yes ____ No ____

If NO, give the approximate date of disposition

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) N/A

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 19th day of November, 2010

Signature of Plaintiff

Inmate Number

Institution Address

Hamed Toussaint
08 A-5795
SouthPort Correctional Facility
P.O. Box 2000
Pine city, N.Y 14871-2000

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this 19th day of November, 2010, I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff:

Hamed Toussaint

TIM S. HOURIHAN
Notary Public, State of New York
Chemung County No. 01H06154367
Commission Expires October 23, 2014

[Signature]

D. Facts:

what happened
to you?

- {A} On 5-17-09 Sunday evening Plaintiff was Taken From His cell and escorted To S.H.U without any Notification as To why.
- {B} On 5-18-09 Monday morning Plaintiff was served with a Tier 3 Misbehavior Report ~ Charges 100.10 Assault on Inmate 104.11 Violent Conduct 113.10 weapon written and reported By Lieutenant Pinker
Hearing Cassette Tape #1067}
- {C} A Confidential Informant allegedly Told Lieutenant Pinker that Plaintiff allegedly conspired with inmate Staley C. #95-B-0035 Illegally entered Inmate Davis #08-A-0801 cell HBB 2-FD each armed with Folded Can lids as weapons on 5-10-09 at approx. 01:15 pm. Once inside inmate Toussant and Inmate Staley allegedly attacked Inmate Davis with Folded Can lids causing serious multiple lacerations To inmate Davis's head, Face, Leg and [REDACTED] hand. Following the alleged attack Both inmates left the scene.
- {D} Allegedly one Folded can lid with a Card Board handle was immediately recovered directly Below the scene of the incident on V gallery. The Folded can lid had what appeared To Be Fresh Blood on it. Inmate Davis was sent To outside Hospital For Treatment. The injuries allegedly incurred To inmate Davis By inmate Toussant and Staley.

D. Facts:

Continuation of
What happened?

{E} Plaintiff was then found guilty of all charges at a Partial Tier 3 Disciplinary Hearing By Commissioner Hearing Officer CALERO and sentenced to 12 months S.H.U., 12 months loss packages, 12 months loss phone, 12 months loss commissary

{F} Plaintiff was then shipped out of Sing Sing C.F. To Southport C.F. S.H.U.

III. Injuries.

Plaintiff States as a result of wrongful confinement He suffers Loss of packages For 180 Days, Loss of phone For 180 Days, Loss of Commissary For 180 Days

Plaintiff States as a result of wrongful confinement He suffers from distress, No Program Pay, Deprived of academic + educational participation, Rehabilitative Programs and all other entitlements inmate of Liberty Status enjoy. Mental anguish from 23 Hours a day confinement, Inappropriate accommodation of Meals 3 Times a Day.

Plaintiff States He was wrongfully confined in Special Housing unit For 180 Days,
From May 17, 2009 - Till - November 17, 2009

Plaintiff States as a result of wrongful confinement He was Relocated From Sing Sing C.F. General population that is 45 minutes distance For his Family visitation To a 6 hour distance Special Housing Unit Facility

Facts1 OF 2

Plaintiff States That His 8th admendment and 14th admendment Due Process rights were violated

{1} The 8th Admendment

Plaintiff was wrongfully confined in Special Housing unit For exactly 180 days - From May 17, 2009 till November 17, 2009 which is violation of His 8th admendment right, Cruel and unusual Punishment.

{2} The 14th Admendment

① Plaintiff was Denied His Fundamental Right To Call Material witness To Testify on His Behalf.

② Pursuant To 7 NYCRR 253.5 ca)(c)(1), The inmate May Call witnesses on his or her Behalf provided Their Testimony is Material, is not redundant, and in doing so does not Jeopardize institutional Safety or Correctional goals.

③ Plaintiff requested The Hearing Officer To Call inmate C. Staley #95-B-0035 To Testify on his Behalf Staley was Named as a Co-perpetrator in the instant MisBehavior Report. The author of This MisBehavior Report L.T. Pinker identified Staley during his Testimony as an alleged Co-perpetrator. This Made Staley a Material witness. see Escort v. Goord 779 NYS 2d 314.

④ Once The Hearing Officer Took L.T. Pinker's Testimony Concerning Staley's alleged participation in

Facts continuation

The incident, Inmate Staley's Testimony there for became relevant and material.

⑤ The Commissioner Hearing Officer CALERO improperly denied inmate Toussaint his regulatory and his 14th admendment due process right to call a witness.

Exhibit-A

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS - BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

BRIAN FISCHER
COMMISSIONER

LUCIEN J. LECLAIRE, JR.
DEPUTY COMMISSIONER
CORRECTIONAL FACILITIES

REVIEW OF SUPERINTENDENT'S HEARING

NAME: TOUSSANT, HANS

NO. 08A5795

HEARING FACILITY: SING SING

ON BEHALF OF THE COMMISSIONER AND IN RESPONSE TO YOUR RECENT
LETTER OF APPEAL, PLEASE BE ADVISED THAT YOUR SUPERINTENDENT'S HEARING OF
JUNE 3, 2009, HAS BEEN REVIEWED AND REVERSED ON AUGUST 20, 2009.

COMMENCE REHEARING WITHIN 7 DAYS AND COMPLETE WITHIN 14 DAYS
OF RECEIPT OF THIS NOTICE.

NORMAN R. BEZIO
DIRECTOR, SPECIAL HOUSING/
INMATE DISCIPLINARY PROGRAM

CC: FACILITY SUPERINTENDENT
CENTRAL OFFICE FILES

APPEAL DECISION RENDERED PURSUANT TO SECTION 254.8 OF CHAPTER V AND
ELECTRONICALLY PRODUCED UPON THE AUTHORITY OF THE DIRECTOR OF SPECIAL
HOUSING/INMATE DISCIPLINE PROGRAM.

